

# Notice of Allowability

Application No.

09/173,531

Applicant(s)

ELLISON ET AL.

Examiner

JOHN PAK

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--  
claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included  
ewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS  
NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative  
of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

☒ This communication is responsive to Applicant's reply of 6/30/2004.

☒ The allowed claim(s) is/are 1-2, 11-12, 14-17, 21, 28-29 [renumbered as].

☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some\* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the  
International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements  
stated below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF  
INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.

(b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of  
Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of  
each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the  
attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

☐ Notice of References Cited (PTO-892)

☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 5/11/2004

☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material


5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.

7. ☒ Examiner's Amendment/Comment

8. ☐ Examiner's Statement of Reasons for Allowance

9. ☐ Other \_\_\_\_\_.

  
JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ms. Suet Chong [Reg. No. 38,104] on 9/29/2004.

#### **AMENDMENTS TO THE CLAIMS**

Rewrite claim 1 as follows, and amend the other claims as shown.

CLAIM 1. (Currently amended) A method of treatment of solid tumors in a human, which comprises administering to a human in need of said treatment a therapeutically effective amount of arsenic trioxide, wherein said solid tumor is a tumor of the central nervous system that is selected from the group consisting of neuroblastoma, retinoblastoma, glioblastoma, and oligodendroglioma.

Claim 16, line 2: after "from" insert --- the group consisting of --- .

Claim 16, last line: delete the last line and insert the following

--- procarbazine, cytokines, therapeutic vaccines, and mixtures thereof. --- .

**CANCEL** claims 22-23.

Claim 28, line 1: delete "compound" and insert --- trioxide --- .

Claim 29, line 1: delete "compound" and insert --- trioxide --- .

### **AMENDMENT TO THE SPECIFICATION**

Specification page 1, line 4 (immediately under the Title): insert the following

--- This application claims the benefit of U.S. Provisional Application 60/062,375, filed on October 15, 1997. --- .

Specification page 12, line 4: delete "FIGURES" and insert --- DRAWINGS --- .

### **OBJECTION TO THE DRAWINGS**

The drawings are objected to because they are not legible. In particular, Figures IA to II, Figures 3A to 3I are too small in font size and the various graph lines cannot be distinguished. **Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.** Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct

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any portion of the drawing figures. The objection to the drawings will not be held in abeyance.

Applicant is reminded that in order to avoid an abandonment of this application, the drawings must be corrected in accordance with the instructions set forth herein.

Applicant is advised that FR 2699820 was crossed out in the attached copy of the PTO-1449 because this reference was not submitted with an English translation or a concise explanation as to its relevance. The fact that it was cited in a search report of some other case does not meet the minimum requirement for the Examiner to consider a foreign language document. The search report must have been for a *counterpart* foreign application. Applicant has failed to establish that the foreign application in which said FR document was cited is a *counterpart* foreign application.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on **(571)272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

A handwritten signature in black ink, appearing to read 'John Pak', is written above the official title.

JOHN PAK  
PRIMARY EXAMINER  
GROUP 1000